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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,357	07/07/2000	Ying Sun	J&J-1930	8243

7590

07/09/2003

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EXAMINER

GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/09/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/612,357

Applicant(s)

SUN ET AL.

Examiner

Konata M. George

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed May 8, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 16-20 is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claims 1-14 and 16-22 are pending in this application.

Request for Continued Examination (RCE)

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 8, 2003 has been entered.

Action Summary

2. Examiner acknowledges the cancellation of claim 15 and the addition of claims 21 and 22.
3. The rejection of claims 1-14 and 16-20 under 35 U.S.C. 103(a) over Zhang et al. in view of Fugiwara is being maintained for the reasons stated in the previous office action dated November 5, 2002.
4. Claim 21 is rejected under 35 U.S.C. 103(a). See below for rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al. (US Pat. No. 6,245,347) in view of Fujiwara (US Pat. No. 4,205,957).

Zhang discloses an exothermic device for topically delivering an active agent comprising an active agent comprising a liquid reservoir, a heating element in contact with the reservoir containing, an oxygen permeable outer layer in communication with the heating element, an active agent and water impermeable membrane separating that active agent from the heating element wherein the properties and the materials meet the instant claimed limitations of the instant claimed invention. The device is used to transdermally apply medicaments (see abstract, col. 1, lines 14-19, summary of the invention and col. 12, lines 11 through col. 21, line 15). Zhang discloses an inorganic powder that is oxidizable and gives off heat (col. 8, line 3 through col. 9, line 11). Zhang does not disclose the capsule containing water and the capsule containing a plurality of orifices that rupture upon increased pressure.

Fujiwara discloses a heating element, a controlled heating device, comprising a liquid reservoir that is a capsule containing water and a salt (col. 2, line 3 through col. 7, line 19). The advantage of heating element taught by Fujiwara is that a longer heating duration is obtained and longer storage.

It would have been obvious to one of ordinary skill in the art to use the teachings of Fujiwara in the invention of Zhang to make the device of the claimed invention, because Fujiwara teaches the use of a capsule containing water. The expected result

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would be an exothermic device that yields longer heating duration and longer storage.

With respect to a plurality of orifices that rupture upon increased pressure, it would have been obvious to one of ordinary skill in the art to have multiple orifices as a way to control the amount of heat and the duration of the heat. The more orifices that rupture the more heat and duration are produced or vice versa the less orifices ruptured the less heat and duration.

Response to Arguments

6. Applicant's arguments filed May 8, 2003 have been fully considered but they are not persuasive.

Applicants argue that the prior art references of Zhang in view of Fujiwara do not disclose a device that contains a capsule that upon rupturing create an exothermic reaction. However, if one refers to column 7, lines 7-19, of Fujiwara, it teaches a disposable pocket heater that has an inner bag that once broken, the solution contacts the heating element thus creating heat.

Conclusion

7. Claims 1-14 and 16-22 stand rejected.

Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is

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(703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read 'Konata M. George', with a stylized flourish at the end.

Konata M. George
Patent Examiner
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